REMARKS

Amendment to the Specification

The specification has been amended to add the priority information necessary to comply with 35 U.S.C. § 119(e) and 37 C.F.R. § 1.78. Applicants previously made a proper claim to priority under Article 8 of the Patent Cooperation Treaty (See pages 1-2 of the Declaration and Power of Attorney filed March 20, 2001).

Comments Regarding Restriction Requirement

Applicants hereby elect, with traverse, to prosecute Group I, which corresponds to newly added claims 21-29, 31-32, and 36-38 drawn to polypeptides, polynucleotides, vectors, host cells, methods of making polypeptides, and methods for treating a disorder using a polypeptide. In addition, Applicants elect the polypeptide sequence of SEQ ID NO:120 and the corresponding polynucleotide sequence of SEQ ID NO:254. Newly added claims 21-29, 31-32, and 36-38 replace original claims 1-6, 8-15, and 19, and are drawn to substantially the same invention, but are of a different scope.

The rules under M.P.E.P. § 1893.03(d) require the Examiner to apply the Unity of Invention standard PCT Rule 13.2 instead of U.S. restriction/election of species practice in national stage applications, such as the instant application filed under 35 U.S.C. 371:

> Examiners are reminded that unity of invention (not restriction) practice is applicable in international applications (both Chapter I and II) and in national stage (filed under 35 U.S.C. 371) applications.

Applicants, therefore, request that the Examiner withdraw the Restriction Requirement at least with respect to claim 30 (Group III), drawn to an antibody. Applicants believe claim 30 meets the unity of invention standards and should be examined together with the elected polypeptide claims of Group I.

Unity of invention exists with respect to dependent claims in the same claim category as the independent claim from which they depend.

MPEP section 1850(A) and 1893.03(d), which recite the provisions of paragraph (c) of Part 1 (entitled "Instructions Concerning Unity of Invention") of Annex B (entitled "Unity of Invention") to the Administrative Instructions Under the PCT, provides:

(A) Independent and Dependent Claims.

> Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims. By "dependent" claim is meant a claim which contains all the features of another claim and is in the same category of claim as that other claim (the expression "category of claim" referring to the classification of claims according to the subject matter of the invention claimed for example, product, process, use or apparatus or means, etc.).
>
> (i) If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, **it does not matter if a dependent claim itself contains a further invention**.... (Emphasis added.)

See MPEP section 1850(A) at page 1800-61. See also MPEP Appendix AI at page 53. Accordingly, new claim 30, drawn to antibodies, should also be examined together with claim 21, drawn to polypeptides, from which it depends.

Minimal burden to search new claims 33-35 and 39-44

Applicants also respectfully submit that there is minimal additional burden on the Examiner to examine newly added claims 33-35 (Group II) and claims 41-42, which are drawn to methods of using the elected polynucleotides; claims 39 and 40, which are drawn to methods of using the elected polypeptides; and claims 43 and 44, which are drawn to microarrays using the elected polynucleotides. The search required to identify prior art relevant to these claims should substantially overlap with that required for examination of the elected polynucleotides and polypeptides of Group I.

Rejoinder of method claims upon allowance of product claims under U.S. practice

The Examiner is reminded that claims 33-35 (Group II) and claims 41-42, which are drawn to methods of using the elected polynucleotides, and claims 39 and 40, which are drawn to methods of using the elected polypeptides, should be rejoined per the Commissioner's Notice in the Official Gazette of March 26, 1996, entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)" which sets forth the rules, upon allowance of product claims, for rejoinder of process claims covering the same scope of products. Applicants request that claims 33-35 and 39-42 be rejoined and examined upon allowance of the claims drawn to the elected polynucleotides and polypeptides of Group I.

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Respectfully submitted,
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